

APPENDIX 3 SOP 50-10(4)

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APPENDIX 3 - RESTRICTIONS ON FOREIGN CONTROLLED ENTERPRISES

Various Federal laws prohibit foreign controlled U.S. enterprises from certain types of activities. These activities are listed below for your guidance. Exercise special care in processing loans involving the types of enterprises.

1. GENERAL RESTRICTIONS FOR FOREIGN CONTROLLED ENTERPRISES

Foreign controlled enterprises operating in the United States, whether in branch or subsidiary form, may not do the following.^{1/}

- a. Engage in operations involving the utilization or production of atomic energy (42 U.S.C. 2133(d)).
 - b. Own vessels which transport merchandise or passengers between U.S. ports or tow U.S. vessels carrying such merchandise or passengers between U.S. ports (46 U.S.C. Appx. 802, 883, 888). There are exceptions to this general rule, one of which permits a foreign controlled U.S. manufacturing or mining company to engage in shipping activities related to its principal business (46 U.S.C. Appx. 833-1).
 - c. Acquire rights of way for oil pipelines or leases or interests therein for mining coal, oil, or certain other minerals on Federal lands other than the outer continental shelf if the foreign investor's home country does not permit such mineral leasing to U. S. controlled enterprises (30 U.S.C. 181, 185).
 - d. Engage in radio or television broadcasting unless the Federal Communications Commission (FCC) finds the grant of a license to be in the public interest (47 U.S.C. 301). The FCC has granted licenses for broadcasting activities ancillary to another business of a foreign controlled enterprise.
 - e. Acquire control of a company engaged in any phase of aeronautics (49 U.S.C. Appx. 1301(1), 1378(a)).
- ^{1/} In certain cases foreign enterprises can acquire a minority interest in corporations engaging in the activities noted but certain management requirements may have to be met.
- f. Be issued permits for intra-United States air commerce or navigation (49 U.S.C. 1371, 1401(b), 1508).
 - g. Obtain a fishery loan from the Secretary of Interior for the financing or refinancing or the cost of purchasing, constructing, or operating commercial fishing vessels or gear (16 U.S.C. 742c(b)(7)).

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- h. Sell obsolete vessels to the Secretary of Commerce in exchange for credit towards new vessels (46 U.S.C. Appx. 1160(h)).
- i. Receive a preferred ship mortgage (46 U.S.C. Appx. 922).
- j. Purchase vessels converted by the Government for commercial use or surplus war-built vessels at a special statutory sales price (50 U.S.C. Appx. 1737, 1745).
- k. Obtain special Government emergency loans from the USDA for agricultural purposes after a natural disaster (7 U.S.C. 1961) or USDA loans to individual farmers or ranchers to purchase and operate family farms (7 U.S.C. 1922, 1941).
- l. Establish an Edge Act corporation to engage in international or foreign banking (12 U.S.C. 619). 1/m. Purchase Overseas Private Investment Corporation (OPIC) insurance or guarantees (22 U.S.C. 2198(c)).
- n. Obtain construction-differential or operating-differential subsidies for vessel construction or operation (46 U.S.C. Appx. 1151 ff., 802).
- o. During war or a national emergency, acquire or charter U.S. flag vessels, vessels owned by a U.S. citizen or shipyard facilities (46 U.S.C. Appx. 835) or acquire controlling interest in corporations owning the vessels or facilities described above without the approval of the Secretary of Commerce (46 U.S.C. Appx. 835).

1/ In addition to its limitations on stock ownership by foreign enterprises, the Edge Act requires that all the directors of the corporation be United States citizens.

2. MANAGEMENT-RELATED RESTRICTIONS ON FOREIGN ENTERPRISES

In certain cases, a foreign controlled enterprise operating in the United States must meet certain requirements relating to management in order to engage in particular activities.

The foreign investor, however, can continue to own all the equity in the enterprise because the laws in question do not contain limitations relating to stock ownership.

Unless these management requirements are met,

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foreign controlled enterprises may not do the following:

- a. Organize a national bank (all directors must be United States citizens) (12 U.S.C. 72).
- b. Engage in dredging or salvaging operations in U.S. waters (To register a vessel to engage in these activities, the president or chief executive officer of a domestic corporation and the chairman of its board must be U.S. citizens. The foreign citizens serving as directors cannot be more than a minority of the number necessary to constitute a quorum.) (46 U.S.C. Appx. 316).
- c. Fish in the territorial water of the United States, land fish caught on the high seas and, except for corporations of countries with traditional fishing rights, fish in the United States fishing zone (See 2.b of this appendix for the management requirements.) (16 U.S.C. 1801, 1821, 46 U.S.C. Appx. 7105) 1/
- d. Transport certain commodities procured by or financed for export by the United States Government or an instrumentality thereof. (See 2.b of this appendix for the management requirements.) There are certain statutory exceptions to this rule (46 U.S.C. Appx. 1241).
- e. Obtain certain types of vessel insurance. (See 2.b of this appendix for the managements requirements.) (46 U.S.C. Appx. 1281 ff.)
- f. Obtain licenses to operate as customs-house brokers (19 U.S.C. 1641). (At least two of the officers must be U.S. citizens.) 1/To the extent that these activities involve the coast wise trade, certain limitations on stock ownership would have to be met (Cf. Sec. 1).

3. RESTRICTIONS APPLICABLE TO FOREIGN BRANCHES OR INDIVIDUALS

- a. In certain cases the form of business organization chosen by a foreign controlled enterprise will determine whether it will be treated differently from an enterprise controlled by United States citizens. If a foreign controlled enterprise chooses to operate through a sole proprietorship or a branch office rather than a corporation organized under the laws of one of the states, it may not:

- (1) Obtain licenses to construct dams, reservoirs, houses, and transmission

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lines (16 U.S.C. 797(e));

(2) Obtain licenses to develop and utilize geothermal steam and associated resources on Federal lands (30 U.S.C. 1001 ff.); or

(3) Obtain certain rights of way, mining rights, leases or other rights on Federal lands. (See, generally, 43 CFR.)

These restrictions would not apply if the foreign controlled enterprises operated through a domestic subsidiary.

b. In addition to restrictions previously noted, foreign citizens may not:

(1) Act as officers and serve in certain other positions on certain vessels (Cf. 46 U.S.C. 8103); or

(2) Function as operators in radio or television stations (47 U.S.C. 303(1)).

4. OBTAINING EX-IMBANK'S COUNTRY LIMITATION SCHEDULE

The Country Limitation Schedule (CLS) is made available by Ex-ImBank and is updated as needed or annually. A current schedule can be obtained via the internet @

<http://www/exim.gov/country/country.htm>.